Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Application of BellSouth Corporation, Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Georgia and Louisiana	)	CC Docket No. 01-277

DECLARATION OF DENISE C. BERGER
ON BEHALF OF AT&T CORP.

I. INTRODUCTION AND QUALIFICATIONS.

1. My name is Denise C. Berger. My business address is 1200 Peachtree Street, N.E., Atlanta, Georgia 30309.

2. I hold a Bachelor of Fine Arts degree from the University of Southern Mississippi and a Master of Business of Administration from the University of Houston with an emphasis in Marketing and Management.

3. I am employed with AT&T as the District Manager for Supplier Performance in AT&T's Local Services and Access Management Department for Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina and Tennessee. As a district manager, my duties entail managing the ongoing performance improvement of AT&T's local services suppliers in the Southern Region for all local services AT&T offers. My team is responsible for evaluating and managing the ongoing performance improvement of AT&T's suppliers, including BellSouth Telecommunications, Inc. ("BellSouth"). We evaluate and

manage to resolution all client escalation requests. My team is partnered with AT&T's internal product delivery and customer care organizations to ensure our suppliers' performance meets or exceeds internal client direct measures of quality.

II. PURPOSE.

4. My declaration addresses BellSouth's failure to provide local number portability and dialing parity in a nondiscriminatory manner, and its failure to provide nondiscriminatory access to unbundled loops.

5. As I discuss in Part III, BellSouth fails to provide nondiscriminatory local number portability in four ways: (1) BellSouth erroneously assigns to its own retail customers numbers that have already been ported to customers of competitive LECs; (2) BellSouth's failure to disconnect telephone numbers in its switch after a port causes customers to lose inbound calling and experience double billing; (3) BellSouth's failure to appropriately upgrade its software causes some customers to lose the ability to have their names appear on called parties' caller identification boxes after a port; and (4) BellSouth markets non-portable numbers from so-called "oddball" NXX codes to its retail customers. (This violation of number portability requirements is also a dialing parity violation, because competitive LEC customers cannot call BellSouth customers who have been assigned numbers from oddball codes.)

6. As I discuss in Part IV, BellSouth does not provide nondiscriminatory access to unbundled loops because its hot cut provisioning performance is not at acceptable levels.

III. BELLSOUTH DOES NOT MEET THE MINIMUM REQUIREMENTS FOR PROVIDING LOCAL NUMBER PORTABILITY OR DIALING PARITY.

A. Background.

7. Section 271(c)(2)(B) of the Act requires a BOC to comply with the number portability regulations adopted by the Federal Communications Commission ("Commission") pursuant to section 251.[1] Section 251(b)(2) requires all LECs "to provide, to the extent technically feasible, number portability in accordance with requirements prescribed by the Commission."[2] Accordingly, BellSouth must provide number portability in a manner that allows users to retain existing telephone numbers "without impairment in quality, reliability, or convenience."[3] The Commission's rules require that any long-term number portability method "not result in any degradation in service quality or network reliability" when customers switch carriers.[4]

8. The Telecommunications Act defines number portability as the ability of users of telecommunications services "to retain, at the same location, existing telecommunications numbers *without impairment of quality, reliability, or convenience* when switching from one telecommunications carrier to another."[5] Local Number Portability (or "LNP") is a network feature that allows a telephone number that originally was assigned to one switch to be ported to a second switch. This feature gives customers the ability to change local service providers without changing their telephone number. As the Commission recognized in its initial number portability order, number portability is essential to meaningful competition in the provision of local exchange services, provides consumers flexibility in the way they use their

[1] 47 U.S.C. § 271(c)(2)(B)(xii).
[2] *Id.*, § 251(b)(2).
[3] *Id.*
[4] 47 C.F.R. § 52.23(a)(5).

telecommunications services, and promotes the development of competition among alternative providers of telephone and other telecommunications services.[6] The Commission explained: "a lack of number portability likely would deter entry by competitive providers of local service because of the value customers place on retaining their telephone numbers. Business customers, in particular, may be reluctant to incur the administrative, marketing, and goodwill costs associated with changing telephone numbers."[7]

9. The Commission has mandated that the Local Routing Number ("LRN") method of LNP be deployed under industry guidelines developed by the Local Number Portability Administration working group ("LNPA") of the FCC's North American Numbering Council ("NANC"). LRN allows the re-homing of individual telephone numbers to other switches through an addressing and routing scheme that uses the SS7 signaling network and centralized databases. Each public network switch is assigned a ten-digit LRN, and each customer's telephone number is matched in a regional database with the LRN for the switch that serves that telephone number.

10. The setting of an "AIN" trigger in the switch currently serving the customer, the "donor" switch, causes call termination in that switch for the particular telephone number to be suspended and a query sent to the LNP database for routing information. Simply stated, the AIN trigger puts the BellSouth switch on alert that the customer is changing local service providers. When a call for the customer arrives in the BellSouth switch, instead of automatically completing the call on the old BellSouth loop, the trigger causes the switch to check whether the number port has been activated by the customer's new carrier. If it has, the BellSouth switch

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[5] 47 U.S.C. § 153(30) (emphasis added).
[6] *First Number Portability Order* ¶ 28.

sends the call to the appropriate competitive LEC switch for completion. If it has not, the BellSouth switch will complete the call as it has in the past.

11. The presetting of the trigger gives the competitive LEC the ability to control the activation of number portability for the telephone number on the date agreed to with the customer. According to national standards, BellSouth should preset AIN triggers for all ported numbers in the donor switch on the day before the porting is to occur. If BellSouth does not properly set the triggers or fails to do the manual translations on or before the due date, the competitive LEC customer will lose some or all of its ability to receive incoming calls.

12. Historically, blocks of 10,000 numbers have been assigned to local switches. A ten thousand block represents a complete NXX prefix in the North American Numbering Plan (NPA-NXX-XXXX). New competitive LEC switches are assigned new NXX prefixes and the competitive LEC is free to give phone numbers within the prefix to its customers. However, more than 75 percent of customers migrating to a competitive LEC choose to keep their old BellSouth number.

B. BellSouth Reassigns Ported Numbers To New BellSouth Retail Customers.

13. BellSouth has chronic problems with the reassignment of numbers that belong to competitive LECs' customers. When a telephone number is ported to AT&T or another competitive LEC, the number should belong exclusively to the competitive LEC customer. In a number of instances, however, after a number has been ported from BellSouth to AT&T, BellSouth has subsequently erroneously assigned the same number to a new BellSouth customer.

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[7] *Id.* ¶ 31 (citations omitted).

14. When this happens, the AT&T customer receives calls from people who are attempting to call the new BellSouth customer. This causes confusion and inconvenience for the AT&T customer as well as the new BellSouth customer. Exhibit 1 outlines number reassignment problems that have affected several of AT&T's customers.

15. BellSouth has never adequately explained or cured this problem. The problem tends to occur to AT&T's large business customers that use PBXs. BellSouth has indicated that the problem stems from its own internal processes – specifically, BellSouth's failure to include the proper Field Identifier ("FID") on its internal orders when it reassigns the number. BellSouth's normal procedure when a customer discontinues service is to place the number in a pool of numbers to be "aged" for one year before it can be assigned to a new BellSouth line. When BellSouth fails to include the appropriate FID on its internal orders when the number is being ported, the effect of the error is that, although the number is in fact ported to the AT&T customer, the number is also simultaneously placed in BellSouth's internal pool of numbers to be ultimately reassigned to a BellSouth customer.

16. Because BellSouth holds these discontinued numbers for one year before assigning them to a new BellSouth customer, this number reassignment problem often surfaces more than a year after the number was originally ported. The problem is like a time bomb waiting to explode and disrupt the competitive LEC customer's business or residential telephone use. When the problem occurs, customers blame it on their local service provider – the competitive LEC – even though it is BellSouth's error.

17. Erroneous number reassignment is very rare among BellSouth customers; it is much more common among CLEC customers with ported numbers. BellSouth has indicated that

it will implement a software change to fix this problem, but not until the third quarter of 2002. In the wake of BellSouth's failure to modify its system and practices and remedy this deficiency, AT&T has asked BellSouth to check its number-aging databases and remove any numbers that were ported to AT&T. Mr. Ainsworth's testimony indicates that BellSouth has checked all of AT&T's numbers and that problems will not recur (*see* Ainsworth at ¶ 174). In fact, as the attached letter from Jan Burriss to Denise Berger (dated September 24, 2001) indicates, BellSouth has checked only AT&T's Digital Link customers, not its customers from the legacy TCG and others that make up the majority of accounts. *See* Exhibit 2. Since then, the problem has continued to occur.

18. The convenience and reliability of CLEC customers' local service should not depend upon BellSouth's sporadic manual efforts. There is no action that AT&T can take to reduce the incidence of number reassignment, short of never porting a number from BellSouth. BellSouth's failure to employ a consistent, automated process to guarantee that no ported numbers are reassigned has a detrimental impact on CLEC customers and, ultimately, on competition.

C. BellSouth's Implementation Of Local Number Portability Causes Customers To Lose Inbound Calling And Experience Double Billing.

19. BellSouth has a process problem that causes some AT&T customers to lose the ability to receive calls from BellSouth customers. The problem occurs frequently when a business customer with a Private Branch Exchange ("PBX") has Direct Inward Dial ("DID") trunks to the PBX. When this type of customer has its numbers ported from BellSouth to AT&T or another CLEC, the customer often loses the ability to receive inbound calls from BellSouth customers that are still on the BellSouth donor switch.

20. The most common source of the problem is BellSouth's failure to perform translation work on its switch (where the switch cannot implement an automatic trigger) at the time the number is ported. As a result, the switch is not programmed to consult the number portability database to determine where to route the number. Instead, the switch tries to route calls to the AT&T customer within the switch and determines that the circuits to the PBX have been disconnected. When this happens, either the number will ring as if no one were answering the phone, or the person trying to call the AT&T customer will receive a message from the BellSouth switch that the number has been disconnected. This problem is sometimes not detected immediately as the customer can make outgoing calls and receives incoming calls that are routed through switches other than the donor switch.

21. This type of problem creates an obvious barrier that prevents CLECs from attracting and keeping customers. Indeed AT&T has received very angry responses from customers that experience this problem including customer threats to move their service back to BellSouth.

22. BellSouth's failure to perform all of the necessary functions associated with porting on or before the due date causes new CLEC local service customers to receive unreliable local service and to be inconvenienced and potentially endangered by the failure to receive certain calls. Emergency services, such as police, fire and medical would most likely not be able to call the new AT&T customer until this problem is fixed. BellSouth's defective porting processes impair the ability of CLECs to compete and inhibit competition.

23. This has been a chronic problem for AT&T and its customers when they receive numbers ported from BellSouth. AT&T addressed this problem with BellSouth several times in

2000. The problem has been so pervasive and has such an impact on customers that AT&T has established special procedures to call BellSouth and remind them to do the translation work in their switches on the due date. This manual work-around has reduced the incidence of the problem, but it places a disparate burden on AT&T.

24. BellSouth's affiant, Mr. Milner, is simply incorrect in contending that these problems are actually AT&T's fault. *See* Milner Aff. ¶ 282. Mr. Milner asserts that the problem is attributable to the fact that, in effect, AT&T sends one company code to BellSouth and a different company code to the Numbering Porting Administration Center ("NPAC"). *Id.* In reality, Mr. Milner is referring to a single episode that occurred in *Kentucky*, and, although AT&T did send the wrong company code to the NPAC in that instance, AT&T's error was obviously not responsible for its customers losing inbound calls. Putting aside the fact that BellSouth must concur in advance on any submission of codes to the NPAC, the same company code in that instance applied to 300 lines, but 266 of those lines were ported without any problem; only 34 of the 300 lines lost inbound calling. The source of the problem can therefore be explained only by BellSouth's chronic failure to perform the necessary translation work in its network.

25. This failure to perform translation work also results in customers continuing to receive bills from BellSouth after they have switched their service to AT&T or another competitive LEC. In a number of instances, BellSouth continued to bill the customer for months after the customer moved to AT&T.

26. BellSouth compounds the problem when the AT&T customer calls BellSouth to complain about the erroneous bill, because BellSouth informs the customer that he is not a

BellSouth customer and advises him to call AT&T. When the customer contacts AT&T, however, AT&T is unable to solve the problem, because it is BellSouth's problem. In most cases, it takes the combined efforts of the customer and an AT&T customer representative to convince BellSouth to discontinue billing.

27. This problem negatively impacts the customers of AT&T and other competitive LECs and does not occur with customers that stay with BellSouth. BellSouth does not provide reliable, convenient number portability to CLEC customers.

D. BellSouth's Implementation Of Local Number Portability Causes Some Customers To Lose Caller Identification.

28. BellSouth's implementation of local number portability also causes customers to lose the ability to have their name appear on caller identification boxes of the recipients of their calls. Although BellSouth claims to have implemented a technical solution to this problem in Georgia and has promised to do so in Louisiana by October 2001, the problem has continued to occur.

29. AT&T has found that the ability to have one's name appear on the caller identification boxes of recipients of calls is a very important feature for many customers. For example, a department store that contacts a shopper wants the shopper to be able to identify the store as the caller. When that department store changes local service providers from BellSouth to AT&T, the department store should be able to keep the same telephone number and have its name and telephone number sent to all parties.

30. The ability to be identified on a call recipient's caller identification box depends upon the presence of ten-digit Global Title Translation ("GTT") capabilities in the network

carrying the call. To date, BellSouth (unlike the other large LECs) has not implemented ten-digit GTT in the Signaling Transfer Points ("STPs") in its Signaling System 7 ("SS7") network. Instead, BellSouth provided for only six-digit GTT, which can identify the state or city where the call originated, but not the identity of the caller.

31. As a result, if a competitive LEC subscribes to a database other than BellSouth's,[8] that competitive LEC's customers who port their numbers from BellSouth lose the ability to be identified to call recipients who are BellSouth customers. If the department store that chose AT&T as its local service provider telephones a customer or potential customer who receives local service from BellSouth, the department store cannot be identified on the call recipient's caller identification display.

32. AT&T has had complaints from customers in Georgia and other states in the BellSouth region regarding this issue, and customers have threatened to leave AT&T if the problem is not fixed. When AT&T requested a fix, BellSouth offered only an interim electronic solution that would have required AT&T to spend $350,000 for software upgrades that would never be used for any other purpose. This was not acceptable to AT&T, and AT&T was forced to seek assistance from regulators to order BellSouth promptly to devise and implement a permanent solution. AT&T filed a complaint with the Tennessee Regulatory Authority which led to a hearing on the issue.

33. The Hearing Officer in the case found the following:

> In conclusion, the Hearing Officer finds that: (1) the number portability requirements found in the Telecom Act and FCC rules as well as state statutes prohibiting anti-competitive practices

[8] Indeed, BellSouth's failure to make the appropriate upgrades is doubly anticompetitive, because it allows BellSouth to leverage its monopoly position to favor its own database product.

> require BellSouth, as well as all other local exchange carriers, to provide the network functions necessary to deliver the caller's name to its subscribers regardless of the caller's choice of carrier, and; (2) neither six-digit GTT nor the interim solution of loading CLEC numbers in BellSouth's CNAM database sufficiently satisfy these number portability obligations, and: (3) applicable number portability obligations do not mandate the deployment of a specific technology such as ten-digit GTT. For these reasons, BellSouth is ordered to make the necessary network modifications to allow the calling party's name to be delivered on all calls regardless of the caller's local service provider. Such modifications shall be in place no later than April 6, 2001.[9]

The Hearing Officer concluded: "As detailed in this order, BellSouth clearly does not comply with the legal mandates for providing number portability."[10]

34. Mr. Milner's testimony asserts that ten-digit GTT has been implemented in Georgia and will be implemented in Louisiana by October 12, 2001 (*see* Milner Aff. ¶ 284). AT&T has resorted to having the calling party information loaded into the BellSouth database for those customers who complain. Moreover, even after BellSouth's implementation of ten-digit GTT, AT&T has had at least one customer who has continued to experience this problem. BellSouth has blamed this latest episode on a problem in BellSouth's switch, but at this point it is unclear whether other customers will continue to experience these problems as well.

E. BellSouth Markets Non-Portable Telephone Numbers To Its Retail Business Customers.

35. BellSouth markets and assigns special telephone numbers from so-called "oddball" NXX codes to retail customers. This is both a dialing parity violation, because competitive LECs' customers cannot even successfully call these numbers, and a number portability violation, because the numbers cannot be ported.

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[9] Initial Order of Hearing Officer, Before the Tennessee Regulatory Authority, Docket No. 00-

36. Prior to the 1996 Act, BellSouth was the numbering administrator in its region, and in that capacity it designated certain NXX codes for its own use, called "oddball" codes. BellSouth assigned these oddball codes to certain internal BellSouth functions, such as retail support centers, network repair, equipment repair, or testing. Such numbers allow end-users to use a single seven-digit telephone number for state-wide applications; when an end-user calls the number, BellSouth's network recognizes the number as being from one of these oddball codes and automatically routes the call to the nearest applicable office.

37. Recently, BellSouth has been marketing and assigning numbers from these "oddball" codes to its retail customers. For example, a chain of pizza restaurants can market a single seven-digit number for ordering deliveries; when a customer calls the number, the network automatically routes the call to the restaurant closest to the customer.

38. There are two major problems with the assignment of oddball codes to BellSouth retail customers. First, the North American Numbering Plan ("NANP") does not recognize these codes as oddball codes; their status as oddball codes is purely internal to BellSouth's network and a relic of BellSouth's tenure as NANP administrator in its region. As a result, BellSouth has informed AT&T that a competitive LEC's local service customers cannot complete calls to oddball codes unless the competitive LEC installs prohibitively expensive and duplicative interconnection trunking. Accordingly, competitive LEC local service customers cannot *even call* BellSouth customers who have been assigned these oddball codes. AT&T has lost customers and others are threatening to leave because they cannot complete calls to these

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00971, pp. 14-15.
[10] *Id.*

numbers. This is a clear violation of the Act's dialing parity requirement. *See* 47 U.S.C. § 271(c)(2)(B)(xii).

39. Second, oddball codes are internal to BellSouth and cannot be ported to competitive LECs. BellSouth argues that these dialable telephone numbers constitute a product, not a telephone number. Yet these are the very telephone numbers that BellSouth's retail customers are advertising to their customers. This means that a BellSouth retail customer with an oddball code number would have to change the number it advertises if it wanted to leave the incumbent local service provider. Number portability is very important to customers, especially business customers that have spent resources marketing a particular phone number. A customer with an oddball code number that was considering changing local service providers could be deterred from making the change because it would lose its established telephone number. BellSouth's practice of assigning oddball codes to certain of its retail customers therefore erects an enormous barrier to competition for those customers.

IV. BELLSOUTH DOES NOT PROVIDE NONDISCRIMINATORY ACCESS TO UNBUNDLED LOOPS, BECAUSE ITS PERFORMANCE IN PROVISIONING HOT CUTS IS DEFICIENT.

40. BellSouth's coordinated cut-over (or "hot cuts") process involves two separate changes to a customer's service that must be made at approximately the same time: (1) the manual transfer of the customer's loop so the loop terminates on the competitive LEC's switch rather than on BellSouth's switch (the loop cut); and (2) the porting of the customer's number, including the software changes and the disconnection of the BellSouth switch translations that permit the appropriate routing of inbound calls to the customer based upon the customer's existing telephone number. The coordinated conversion process is called a hot cut because the

customer's loop is lifted or "cut" while it is still in active service (*i.e.*, the loop is "hot"), resulting in a temporary loss of active service.

41. BellSouth's ability to perform this process properly is one of the key issues in determining whether BellSouth meets its obligations under the Telecommunications Act of 1996 (the "Act") to provide non-discriminatory access to loop provisioning (Checklist Item 4). As detailed below, BellSouth's coordinated cut-over performance fails to satisfy the requirements of Checklist Item 4.

A. Background.

42. Pursuant to section 251, BellSouth must provide competitive LECs nondiscriminatory access to unbundled loops on terms and conditions that are just and reasonable.[11]

43. Although unbundled loops and number portability may be provided separately, AT&T most often orders the two items together as part of a hot cut. A competitive LEC can order these two items with or without coordination with BellSouth. A "without coordination" hot cut means that BellSouth works the order at any time on the due date. Further, BellSouth will notify AT&T at any time on the due date that the loop and port are ready to be converted. A "with coordination" hot cut means that BellSouth and AT&T closely coordinate each step of the process so that AT&T knows and confirms the precise time on the due date that the hot cut is complete. AT&T orders, and pays a premium price for, the port and the loop "with coordination" in order to increase the predictability of the experience for its new customers.

[11] 47 U.S.C. §§ 251(b)(2), (c)(3).

44. A hot cut requires interruption of a customer's service. As a result, the process must be reliable and predictable in order to minimize the service disruption. In its decision on Southwestern Bell Telephone Company's 271 application for Texas, the Commission explained the need for a reliable and predictable hot cut process:

> The ability of a BOC to provision working, trouble-free loops through hot cuts is critically important in light of the substantial risk that a defective hot cut will result in competing carrier customers experiencing service outages for more than a brief period. Moreover, the failure to provision hot cut loops effectively has a particularly significant adverse impact on mass market competition because they are a critical component of competing carriers' efforts to provide service to the small- and medium-sized business markets.[12]

45. Because the hot cut process is performed when a BellSouth customer changes its local service to AT&T, there is no retail analog (similar or same process that BellSouth performs for itself) for comparing BellSouth's customers' experience to AT&T's customers' experience. In recognition of the lack of a retail analog for comparisons, the Commission has provided guidance for evaluating whether an incumbent local exchange carrier's performance satisfies the checklist requirements by demonstrating that "it provisions hot cuts in sufficient quantities, at an acceptable level of quality, and with a minimum of service disruption."[13]

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[12] Memorandum Report and Order, *Application by SBC Communications Inc., Southwestern Bell Telephone Company, And Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 To Provide In-Region, InterLATA Services In Texas*, CC Dkt. No. 00-65, ¶ 256 (rel. June 30, 2000) (hereinafter *"Texas Order"*).

[13] Memorandum Opinion and Order, *Application by Bell Atlantic New York for Authorization Under Section 271 of the Communication Act To Provide In-Region, InterLATA Service in the State of New York*, CC Dkt. No. 99-295, FCC 99-404, 1999 WL 1243135 (rel. Dec. 22, 1999) ¶ 291 (hereinafter "*New York Order*"). The FCC has articulated a similar standard for UNE Loop hot cuts in prior orders, holding that a BOC "must demonstrate that it can coordinate number portability with loop cutovers in a reasonable amount of time and with minimum service disruption." Memorandum Opinion and Order, *Application of BellSouth Corporation, et al. for*

46. Obtaining unbundled local loops, number porting, and an effective hot cuts process are the principal means by which competitive LECs can compete in the small- and medium-sized business markets. Hot cut provisioning "with a minimum of service disruption"[14] requires that competitive LECs receive timely, accurate, and reliable hot cut loop provisioning from BellSouth and a seamless transition of customers from BellSouth's service to the competitive LEC's local service. The Commission has stated that it is "looking for patterns of systematic performance disparities that have resulted in competitive harm or otherwise denied competing carriers a meaningful opportunity to compete."[15]

47. A cut-over conversion or hot cut process that meets the standard of minimal service disruption must be coordinated to run smoothly and predictably, so customers can plan for the loss of active service around their business's unique cycle of daily activity and accommodate the duration of the disruption accordingly. Otherwise, unexpected or prolonged service outage will likely deter customers from seeking local service from competitive LECs and will therefore inhibit competition.

48. As I explain below, BellSouth fails to meet the Commission's guidelines. BellSouth's unwillingness to provide non-discriminatory access to its unbundled loops with

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Provision of In-Region, InterLATA Services in Louisiana, CC Docket No. 98-121, FCC 98-271 (rel. Oct. 13, 1998) (hereinafter "*Louisiana II*"), ¶ 279.

[14] *See New York Order* ¶ 291; *see also Louisiana II* ¶ 279.

[15] Memorandum and Order, *Application of Verizon New England Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions) and Verizon Global Networks, Inc., For Authorization to Provide In-Region, InterLATA Services in Massachusetts*, CC Docket No. 01-9, FCC 01-130 (rel. April 16, 2001) ¶ 122 ("*Massachusetts Order*").

porting causes "competitive harm" to competitive LECs and denies competitive LECs "a meaningful opportunity to compete."[16]

B. The Hot Cut Process.

49. To coordinate a hot cut both BellSouth and the competitive LEC must perform multiple tasks in the ordering and provisioning processes of the hot cut, and both parties to the hot cut must coordinate these operations in the proper, agreed-upon sequence.

50. The hot cut process has eight steps: (a) Pre-Design; (b) Design; (c) Local Exchange Contact; (d) Customer Contact; (e) Number Portability; (f) Testing; (g) The Hot Cut; and (h) Quality Assurance. In the Pre-Design step, AT&T accesses BellSouth's pre-ordering Operations Support Systems ("OSS") in order to obtain the correct customer information, such as name, address and telephone number. An AT&T agent uses this information to create the AT&T customer service record.

51. In the Design step AT&T electronically assigns specific facilities to AT&T's switch and equipment located in AT&T-owned collocation space in a BellSouth central office. BellSouth provides AT&T the customer's loop, which is connected to AT&T's switch through the collocation site. AT&T then needs access to BellSouth's LFACS database to confirm that the Connecting Facility Assignment ("CFA") information in each database matches.

52. The Local Exchange Contact step involves AT&T's preparation of the Local Service Request ("LSR") for electronic submission to a BellSouth interface. The LSR specifies a date and time for the conversion based on the needs of the AT&T customer. Upon receipt of the LSR, BellSouth validates that the order is error free, and sends AT&T a Firm Order

[16] *Id.* at ¶ 122.

Commitment ("FOC").[17] The FOC indicates that the order has been checked for errors and will be processed and provisioned at a specific time on a specific date. BellSouth does not check for facility availability or for technician availability prior to sending the FOC to AT&T.

53. The Customer Contact step involves a second review of the order by AT&T along with notification to the customer regarding the specific time and date when the hot cut is scheduled to take place, based on the information BellSouth returns on the FOC.

54. The Number Portability step requires notification of the National Number Portability Administrator that reprogramming is needed to move the customer's telephone number from BellSouth to AT&T. This is done by sending an electronic "create" message to the administrator for activation of the telephone service at a later point in the process.

55. During the Testing stage, BellSouth must determine that AT&T's connecting facilities are ready by checking to see if Dial Tone and Automatic Numbering Identification ("ANI") are present. Within 24 to 48 hours prior to the start of the actual hot cut, BellSouth should place a concurrence call to notify AT&T of the test results and whether the hot cut can proceed as scheduled. During the concurrence call, BellSouth must provide the following information to AT&T: (1) Dial Tone and ANI Results; (2) FOC Due Date; (3) FOC Frame Due Time; (4) Number of Lines; and (5) Cable and Pair Assignment. The concurrence call is the first time that BellSouth informs AT&T whether the previously confirmed FOC date and time of the cutover will be met. If BellSouth states that it is unable to meet the date and time originally scheduled for the conversion, then AT&T must contact the customer to determine an acceptable alternative and reschedule the date and time for the cut.

[17] Prior to the May 15, 2001 Memorandum of Understanding, the FOC was a "Firm

56. After the testing is completed, the Physical Connection step of the hot cut process is performed. The loop is disconnected from BellSouth's switch and cross-connected to the equipment in AT&T's collocation space (the loop cut).

57. Quality Assurance is the final step in the process and is designed to ensure that the customer has full service. AT&T reviews whether all of the lines and features have been successfully ported and sends a message to the National Portability Administration Center ("NPAC") indicating that the number should be ported. AT&T then accepts the service from BellSouth. At this point, BellSouth should send its internal disconnect orders, which terminate BellSouth billing to the customer and remove the customer from the BellSouth switch by removing the translations. The customer should now be able to make and receive calls as an AT&T customer.

58. If the multiple steps of the hot cut process are not performed in the proper sequence, and in a coordinated manner between BellSouth and the competitive LEC, and if BellSouth does not complete its downstream processes appropriately, the customer will experience a service outage. The Commission has observed that proper coordination of the hot cut between the Bell Operating Company and the competitive LEC is "critical because problems with the cut over could result in an extended service disruption for the customer."[18]

59. AT&T has worked with BellSouth over the past several years in an attempt to establish and implement an efficient, reliable, and predictable process for hot cut provisioning. Over much of the last two years, AT&T and BellSouth engaged in negotiations meant to minimize problems affecting AT&T's customers related to hot cuts. For much of this time,

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Order Confirmation."

AT&T and BellSouth were essentially at gridlock on this issue. Meanwhile, AT&T's efforts to compete with BellSouth were hampered by BellSouth's problems in hot cut ordering and provisioning.

60. On April 16, 2001 AT&T and BellSouth came to an agreement in principle concerning hot cuts and memorialized that agreement in a Memorandum of Understanding ("MOU"). The MOU became effective on May 15, 2001. AT&T believes the MOU is a positive, but much delayed, step forward in AT&T's ongoing effort to resolve the ordering and provisioning problems that AT&T experiences when its customers undergo a "hot cut".

61. While the MOU has been an encouraging step, AT&T continues to experience serious, competition-impeding problems with hot cut provisioning. Indeed, as explained below, BellSouth's performance has actually *worsened* over the summer.

B. BellSouth Still Does Not Provide Timely Hot Cut Provisioning.

62. BellSouth's methods of measuring hot cut performance remain inadequate. Indeed, BellSouth's hot cut provisioning measures are not designed to measure the impact of a hot cut on the *customer*. Using its own performance measures, BellSouth asserts that its hot cut provisioning performance is adequate. *See* Varner Ga. Aff. ¶ 239. But when recalculated using the appropriate measures, approved by this Commission in the *New York Order*, BellSouth's performance is shown to be seriously inadequate, and indeed, worsening.

63. BellSouth currently provides four performance measures in Georgia unique to Coordinated Customer Conversions. Measure P-7, Coordinated Customer Conversions Interval measures the interval from the time the technician disconnects the customer's loop from the

[18] *New York Order* at ¶ 291 n.925.

BellSouth switch until he or she cross-connects the loop to the CLEC's equipment. Measure P-7A, Coordinated Customer Conversions – Hot Cut Timeliness Percent Within Interval and Average Interval, measures whether BellSouth begins the cut over of an unbundled loop on a coordinated and/or a time specific order at the CLEC requested start time, measuring the percentage of orders where the cut begins within fifteen minutes of the requested start time of the order and the average interval. Measure P-7B, Coordinated Customer conversions – Average Recovery Time, measures the time between notification and resolution by BellSouth of a service outage found prior to the service order completion that can be isolated to the BellSouth side of the network. Measure P-7C, Hot Cut Conversions – Percent Provisioning Troubles Received Within Seven Days of a Completed Service Order, measures the percent of provisioning troubles received within seven days of a completed service order associated with coordinated and non-coordinated customer conversions. These measurements, however, ignore critical hot cut issues that include the following:

(a) Whether the cut was completed in a timely manner. Measure P-7, Coordinated Cutover Conversions Interval, measures the interval from the time the technician disconnects the customer's loop from the BellSouth switch until he or she cross-connects the loop to the competitive LEC's equipment. Measure P-7A, Coordinated Cutover Conversion – Hot Cut Timeliness Percent Within Interval and Average Interval, measures whether BellSouth begins the cutover of an unbundled loop on a coordinated and/or time specific order at the competitive LEC's requested time, measuring the percentage of orders where the cut begins within fifteen minutes of the requested start time of the order and the average interval;

(b) Whether the FOC was issued in time to allow the CLEC to timely activate the number porting process and perform other essential activities;

(c) Whether the customer's service was impaired during the provisioning process; and

(d) Whether the CLEC was notified of the cut so it could timely port the number.

64. Lack of timely and accurate performance in any one of these areas negatively impacts the customer's service. In other words, stellar performance as measured by the Georgia metrics is perfectly consistent with unacceptable levels of inconvenience and cost for customers attempting to switch their service to a competitive LEC.

65. In its *New York Order*, the Commission discussed the minimum requirements for meeting three hot cut measures that Bell Atlantic was to satisfy in order to comply with the 271 checklist. *See New York Order* at ¶ 309. Bell Atlantic was required to meet on-time hot cut performance at rates at or above 90%, have fewer than 5% of hot cuts result in service outages, and have less than 2% of its hot cuts have installation troubles in order to be in compliance with the competitive checklist. The first measure is called Hot Cut Timeliness, but the calculation of the measure relied upon by the Commission in the New York Order differs from BellSouth's calculation of the measure. The second measure, Percent of Hot Cuts Resulting in Outages, has been adopted in Georgia as a diagnostic, but BellSouth has not yet begun reporting the data. The third measure is Percent Hot Cut Troubles in Seven Days. BellSouth reports this measure with compliant performance.

66. Because its timeliness measure differs from that discussed in the *New York 271 Order*, BellSouth lacks a measurement accurately to determine whether it is performing cuts at the time specified (and paid for) by the competitive LEC. BellSouth reports only the interval between the time the technician disconnects the loop until he cross-connects the loop to the competitive LEC's equipment. The appropriate metric would be to measure the interval between

the *due date due time* that the parties have agreed to, until the time BellSouth *notifies* the competitive LEC that the hot cut is complete.[19]

67. According to BellSouth's analysis, "[f]or the coordinated conversions (i.e., hot cuts) BellSouth in Georgia met the 15 minute benchmark for 6,615 of the 6,673 scheduled conversions (lines) or greater than 99% for the three month period of May, June and July 2001." Varner Ga. Aff. ¶ 239.

68. AT&T's own performance tracking indicates that BellSouth is not performing at an acceptable level. In calculating its data, AT&T relied upon the loop cutover calculation measures required by the Commission in its *New York 271 Order* and assumed the start date and time matched the date and time returned by BellSouth on the FOC. Using that measure – which much more accurately measures the impact a customer would experience from a time-specified hot cut – AT&T's data indicates that BellSouth's on-time performance for completing hot cuts in Georgia was 83 percent in May, 2001, and 85 percent in June 2001. In July, 2001 BellSouth's performance dropped to 79 percent; and in August, 2001, its performance dropped again to *72 percent*. *See* Exhibit 3.

69. In response to a request from the Justice Department, BellSouth filed some additional information on hot cut provisioning performance on October 9, 2001 (and filed with this Commission as an ex parte filing). In this new filing, BellSouth provides data purporting to include the time it takes to notify competitive LECs that a loop conversion has been completed. BellSouth's new data still does not even purport to measure the customer's experience, however, because it does not report its performance relative the due date due time. As noted above,

[19] Indeed, competitive LECs cannot track when the cut begins because BellSouth does not have a

AT&T's own tracking of BellSouth's performance indicates that a substantial (and growing) percentage of hot cuts are not performed in a timely manner.

70. BellSouth's performance in the provisioning of hot cuts has an enormous impact on the customer's experience during the customer's transition to a CLEC's service. Performance assessment is therefore imperative for a proper Section 271 analysis, and BellSouth's performance cannot be adequately assessed without more appropriate performance measures. Consequently, based on the present performance measurements, BellSouth cannot and has not established that it complies with Checklist Items 4 and 11.

71. BellSouth has not met its burden of establishing that it "provisions hot cuts in sufficient quantities, at an acceptable level of quality, and with a minimum of service disruption."[20] Accordingly, BellSouth has failed to satisfy the checklist requirements for just and reasonable provision of unbundled loops and number portability, and Section 271 prohibits BellSouth from providing interLATA services at this time.

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tracking mechanism in place for this measurement.

[20] *See New York Order* at ¶ 291; *see also Louisiana II* at ¶ 279.